IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1330 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRABHAI MANHARBHAI DAVE

Versus

GULABSINH ROR,

Appearance:

MR JAYANT PATEL for Petitioner

MR PREMAL R JOSHI for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

MR PR ABICHANDANI, AGP, for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/06/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner had challenged the order dated 5-2-1999 passed by the Additional Development

Commissioner dismissing Appeal No.2/99 and confirming the order dated 24-12-1998 passed by the District Development Officer, Rajkot removing the petitioner from the office of the Sarpanch of Lunsar Gram Panchayat.

2. When this petition has reached final hearing today, Mr. Jayant Patel, learned counsel for the petitioner, Mr. P.R. Abichandani, learned AGP for respondent No.4 and Mr. Premal Joshi for District Development Officer, Rajkot state that since the term of office of Sarpanch, Lunsar Gram Panchayat has already expired by efflux of time, the impugned order of removal as confirmed by the Appellate Authority does not require any judicial scrutiny at this stage.

3. Mr. Jayant Patel, learned counsel for the petitioner, however, submits that in case the authorities rely on the impugned order of removal for the purpose of disqualifying the petitioner from contesting any elections, the petitioner may unnecessarily be prejudiced. It is the contention of Mr. Patel that a Sarpanch who is removed from office cannot be disqualified without giving him a specific notice for disqualification under subsection (2) of section 57 of the Act.

4. Mr. P.R. Abichandani, learned AGP submits that the disqualification would entail by virtue of provisions of section 30(1)(d) of the Act and no fresh notice or order is required to be passed. In his submission, law would take its own course and no further action is required to be taken by the authorities nor any orders are required to be passed by any authority before the petitioner can be treated as disqualified for a period of five years from the date of removal.

5. It appears to the Court that for the present, the controversy is academic because elections to Lunsar Gram Panchayat have already been held in the mean time and results thereof were declared in July, 2000. Hence, the question of any disqualification for the purpose of elections to Lunsar Gram Panchayat is not likely to arise if the Gram Panchayat is allowed to run its statutory term in the normal course.

6. In case the petitioner wants to contest for any office in any other Gram Panchayat or Taluka Panchayat, it will be open to the petitioner to raise all available contentions including the aforesaid contentions urged on his behalf by Mr. Patel. It would be then for the appropriate authority to consider and decide those

contentions in accordance with law. The petitioner will also be at liberty to raise all available contentions in appropriate proceedings.

7. Subject to the aforesaid observations, the petition is dismissed as infructuous. Rule is discharged.

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zgs/-